

REPRESENTATIVE FOR PETITIONER:  
Joshua G. Anderson, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT:  
Susan D. Bevers, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

BAIRD MOBILE HOMES, INC.,	)	Pet. No. : 36-009-07-3-4-00001
	)	
Petitioner,	)	Parcel No.: 36-66-15-400-021.001-009
	)	
v.	)	County: Jackson
	)	
JACKSON COUNTY ASSESSOR,	)	Township Jackson
	)	
Respondent.	)	Assessment Year: 2007

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Appeal from the Final Determination of the  
Jackson County Property Tax Assessment Board of Appeals

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**SEPTEMBER 6, 2016**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**ISSUE**

1. The Petitioner, Baird Mobile Homes, Inc., filed a Form 133 Petition for Correction of Error seeking a reduction in its assessment. Did the Petitioner allege objective errors that may be corrected on a Form 133 petition?

## PROCEDURAL HISTORY

2. On August 13, 2010, the Petitioner filed a Form 133 petition with the Jackson County Auditor. The Petitioner alleged there was a mathematical error in computing the assessment. In the space provided to explain why it claimed an error had been made, the Petitioner indicated: (1) that the township assessor had used sales of dissimilar properties, (2) that nearby properties were assessed for less than the subject property, (3) that an appraisal for March 1, 2008, showed a lower value for the property, (4) that county officials had adjusted the assessment for 2008, and (5) that the land assessment for 2009 was only \$627,000 compared to \$2,354,200 for 2007. *Form 113 petition.*
3. The Auditor and the Respondent, Jackson County Assessor, disapproved the petition and forwarded it to the PTABOA. On June 30, 2014, the PTABOA denied the petition. *Form 133 petition.*
4. On November 6, 2014, the Petitioner filed the Form 133 petition with the Board, alleging that the local officials had “used a 133 or COE” to make a correction for 2008 but had refused to do so for the previous two years. The Petitioner also alleged it first received notice the PTABOA’s action through an October 8, 2014 e-mail from the Respondent.<sup>1</sup> *Form 133 petition.*
5. On June 23, 2016, our administrative law judge, Gary W. Ricks (“ALJ”), held a hearing on the Form 133 petition. Neither he nor the Board inspected the property.
6. Joshua G. Anderson, a certified tax representative, appeared for the Petitioner. Susan D. Bevers appeared as counsel for the Respondent. Both Anderson and Jackson County Assessor Katie Kaufman were sworn as witnesses, although only Anderson testified.

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<sup>1</sup> The Respondent did not claim that the Petitioner failed to timely file the Form 133 petition with the Board.

7. The Respondent offered no exhibits. The Petitioner offered the following exhibits:
  - Petitioner's Exhibit 1: Tax Representative Contingent Fee Disclosure,
  - Petitioner's Exhibit 2: Power of Attorney,
  - Petitioner's Exhibit 3: Claim for refund ("Form17T"),
  - Petitioner's Exhibit 4: Copy of refund check,
  - Petitioner's Exhibit 5: Part of an appraisal of subject property as of 3/1/08,
  - Petitioner's Exhibit 6: Form133 petition,
  - Petitioner's Exhibit 7: Printout of December 30, 2013 article from nwtimes.com entitled "Tax Court nixes time limit on property tax error claims,"
  - Petitioner's Exhibit 8: Form 133 petitions for years 2002 through 2008, and copies of e-mails between and among the parties or their representatives.
  
8. The record also includes the following: (1) all pleadings, briefs, and documents filed in this appeal, and (2) all orders and notices issued by the Board or the ALJ.
  
9. The subject property is located at 208 Commerce Drive in Seymour. The record is unclear as to the amount for which it was assessed. At hearing, the Petitioner's counsel indicated that it was assessed for \$2,185,200, with the bulk of that total (\$2,088,200) assigned to the land. The Form 133 petition indicates the land alone was assessed at \$2,354,200, while one of the Petitioner's exhibits reflects a total assessment of \$2,354,200. *See Bevers statement; Form 133 petition; Pet'r Ex. 8.*
  
10. On its Form 133 petition, the Petitioner requested that the land portion of the assessment be changed to \$627,900 to match its assessment for 2009. At the hearing, the Petitioner asked for a land assessment based on an appraisal estimating the land's value at \$636,500 as of March 1, 2008, with an appropriate factor to trend the value to 2007.

### **OBJECTIONS**

11. The Petitioner objected to all argument offered by Susan Bevers, the Respondent's attorney, on grounds she did not file a notice of appearance before the hearing. We overrule the objection. The Respondent authorized Bevers to appear on her behalf, and Bevers promptly filed a notice of appearance following the hearing.

12. The Respondent objected to Petitioner's Exhibits 3 and 4—a refund claim for taxes paid in 2009 based on the 2008 assessment (Ex. 3), and the refund check issued on that claim (Ex. 4)—on relevance grounds. The Petitioner claims the exhibits are relevant because they show that local officials corrected an error for 2008, and that the Petitioner is entitled to the same correction for 2007.
13. The exhibits do not identify the specific error that was corrected for 2008. Regardless, the Petitioner's representative and witness, Joshua Anderson, testified without objection about the change to the 2008 assessment, making the exhibits largely cumulative. We therefore overrule the objection.
14. Finally, the Respondent objected to Petitioner's Exhibit 8—copies of Form 133 petitions for 2002 through 2008 and an e-mail string relating to those petitions—on grounds that none of the petitions are file marked. The Petitioner countered that the Respondent improperly failed to file-mark the petitions or to hold hearings on them. Those petitions are not before us on appeal. Thus, we need not decide whether they were properly filed. While we struggle to see their relevance, the Petitioner did not object on those grounds. We overrule the objection.

#### **SUMMARY OF PETITIONER'S CASE**

15. The Respondent corrected an error in the property's 2008 assessment. Based on that error, the Petitioner requested, and was granted, a refund of \$31,504.64. The 2008 correction was based on an appraisal, which valued the property at \$635,000 as of March 1, 2008. The inflated assessment goes back to 2002 and is likely based on a single commercial sale. Thus, the error corrected for 2008 applies to the earlier assessments as well, including the 2007 assessment at issue in this appeal. *Anderson testimony and argument; Pet'r Ex. 5.*

16. On December 30, 2013, an article appeared discussing an Indiana Tax Court decision holding that there was no time limitation for filing Form 133 petitions following April 1, 2000. The next day, the Petitioner filed Form 133 petitions for all the years in which the property was over-assessed.<sup>2</sup> *Anderson testimony; Pet'r Exs. 7-8.*
17. The Petitioner acknowledged that it ideally would have filed appeals within 45 days after the tax bills came out each year. But it is seeking a fair and equitable assessment. While the Respondent argues she should not have to go back and correct earlier assessments, the Petitioner should not be burdened with the taxes based on six years worth of erroneous assessments. *Anderson argument.*
18. The Petitioner would agree to a value for 2007 that is based on the appraisal for 2008, trended for time. The trended value should be close to the value estimated in the appraisal. *Anderson testimony, Pet'r Ex. 5.*
19. The lack of responsiveness by local officials has been an ongoing problem. They neither file-marked the Form 133 petitions from December 31, 2013, nor set them for hearing. While the PTABOA heard the Form 133 petition at issue here, it waited four years to do so. *Anderson testimony; Pet'r Ex. 8.*

#### **SUMMARY OF RESPONDENT'S CASE**

20. A Form 133 petition may only be used to correct objective errors, such as mathematical errors, errors in the description of a property, or errors in the rate used to calculate taxes. It cannot be used to challenge a property's assessed value. Those challenges require resort to subjective judgment and must be appealed on a Form 130 petition within 45 days after an assessment is issued. The deadline for the Petitioner to challenge the property's 2007 assessment passed long before the Petitioner filed its Form 133 petition. *Bevers argument.*

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<sup>2</sup> It is not clear why the Petitioner included petitions for 2007 and 2008. The assessment had already been changed for 2008, and the Petitioner had filed a petition for 2007—the one at issue in this appeal—on August 13, 2010.

21. The Petitioner incorrectly claims that its successful use of the correction of error process for 2008 requires a change to the property's 2007 assessment as well. Each assessment and each tax year stands alone. The fact that local officials made a mistake by using the correction of error process for 2008 does not mean the mistake must be compounded by extending it to other years. *Bevers argument* (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d. 1116 (Ind. Tax Ct. 1991) and *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645 (Ind. Tax Ct. 2001)).

### ANALYSIS

22. There are two distinct procedures for challenging an assessment: (1) the appeal procedures laid out in Ind. Code § 6-1.1-15-1 ("Section 1"), and (2) the correction of error process under Ind. Code § 6-1.1-15-12, for which a Form 133 petition is used. "The taxpayer challenging a property assessment bears the responsibility of using the appropriate method." *Bender v. Indiana State Bd. of Tax Comm'rs*, 676 N.E.2d 1113, 1114 (Ind. Tax Ct. 1997).
23. "The procedures set forth in Indiana Code Section 6-1.1-15-1 . . . are only available to challenge a current year's assessment." *Lake County Property Tax Assessment Bd. of Appeals v. BP Amoco Corp.*, 820 N.E.2d 1231, 1233 (Ind. 2005). A taxpayer can use those procedures to challenge any element of assessment. But the taxpayer must file its appeal within 45 days after being given notice of the assessment determination, or if no such notice is given, by the later of: (1) 45 days after the date of the tax statement mailed by the treasurer, or (2) May 10. I.C. § 6-1.1-15-3 (c) and (d).<sup>3</sup>

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<sup>3</sup> These are the deadlines under Ind. Code § 6-1.1-15-1 as it currently reads. That statute has been amended several times since the March 1, 2007 assessment date at issue in this appeal. For that assessment date, a taxpayer had to appeal within 45 days after notice of an assessment was given. If no notice was given, the taxpayer had to appeal by May 10 of the year in which the assessment date occurred. Any change made as a result of appeals filed after the deadline became effective for the next assessment date. I.C. § 6-1.1-15-1(b) (2006 repl. vol.).

24. By contrast, the correction of error process may be used to correct errors in prior years. When the Petitioner filed its Form 133 petition in August 2010, there was no time limitation for filing such petitions. *See Hutcherson v. Hamilton County Ass'r*, 2 N.E.3d 138, 142 (Ind. Tax Ct. 2013) (holding that, following the repeal of 50 IAC 4.2-3-12 on April 1, 2000, neither the correction of error statute nor its accompanying regulations included any time limit for filing Form 133 petitions). Currently, such petitions must be filed “within three (3) years after the taxes were first due.” I.C. § 6-1.1-15-12(i)(2); 2014 Ind. Acts 183 § 19. Unlike Section 1 appeals, however, the correction of error process is only available to correct a limited subset of errors, including that “[t]here was a mathematical error in computing an assessment.” I.C. § 6-1.1-15-12(a)(7).
25. As the Tax Court has repeatedly explained, the correction of error process is not available for matters requiring subjective judgment. *E.g. O’Neal Steel v. Vanderburgh Co. Property Tax Assessment Bd. of Appeals*, 791 N.E.2d 857, 860 (Ind. Tax Ct. 2003). A determination is objective if it hinges on simple, true or false findings of fact. *See Bender*, 676 N.E.2d at 1115. By contrast, “where a simple finding of fact does not dictate the result, or discretion plays a role, [the] decision is considered subjective and may not be challenged through a Form 133 filing.” *Id.*
26. Thus, taxpayers cannot use the correction of error process and its more generous filing deadlines<sup>4</sup> to circumvent the deadlines and procedures under Section 1. *See Reams v. State Bd. of Tax Comm’rs*, 620 N.E.2d 758, 76 (Explaining that “[t]o allow Form 133 petitions to have . . . retroactive subjective relief . . . would vitiate” Section 1 appeals). An appeal claiming an assessment does not accurately reflect a property’s true tax value almost invariably requires market-driven evidence and, consequently, subjective judgment. *See Town of St. John v. State Bd. of Tax Comm’rs*, 698 N.E.2d 399, 400 (Ind. Tax Ct. 1998) (“A calculation of the effect of real world evidence on an individual

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<sup>4</sup> Or, for the period between April 1, 2000 and the 2014 amendment to the correction or error statute, the lack of any deadline.

assessment will typically require subjective judgment.”). Such a claim must be brought under Section 1.

27. Although the Petitioner characterizes its claim as one of mathematical error in computing the property’s assessment, it did not identify what the supposed error was. Among other things, the Form 133 petition refers to (1) the dissimilarity of properties used by the Respondent in computing the assessment (2) the comparatively lower assessments of nearby properties, and (3) an appraisal estimating the property’s land value at \$636,500 as of March 1, 2008. At hearing, the Petitioner said nothing about the first two allegations, but did offer part of the appraisal as an exhibit. While those things might be relevant to the property’s true tax value,<sup>5</sup> determining that value requires the exercise of subjective judgment. Thus, the Petitioner needed to seek relief within the time limitations of a Section 1 appeal.
28. The Petitioner also points to the fact that the 2008 assessment was changed through the correction of error process. The Petitioner did not offer a copy of the Form 133 petition that prompted the correction for 2008. But Anderson testified that the correction was based on the appraisal. If so, that appears to be improper because it was untimely under Section 1. We agree with the Respondent that we are not required to compound that mistake by extending it to other years. In any case, each assessment and each tax year stands alone. *Fleet Supply*, 747 N.E.2d at 650. Thus, even if the 2008 correction were proper, it would not remove all discretion in determining the property’s true tax value for 2007.
29. To challenge the level of its property’s assessment, the Petitioner needed to file and prosecute an appeal under the Section 1 procedures within the appropriate deadline. It

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<sup>5</sup> For the appraisal to be probative, the Petitioner would have to explain how it related to the property’s value as of January 1, 2006—the valuation date for 2007 assessments. *See Long v. Wayne Twp. Ass’r*, 821 N.E.2d 470-71 (Ind. Tax Ct. 2005); 50 IAC 21-3-3(b) (2006) (“The valuation date is January 1 of the year preceding the year of the assessment date.”).

failed to do so. It cannot use the correction of error process to avoid the consequences of its failure.

**FINAL DETERMINATION**

30. The Petitioner's claim is inappropriate for a Form 133 petition. We therefore find for the Respondent.

This Final Determination of the above captioned matter is issued on the date first written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.